ment or authority might be concerned. Section 402(6) of the Straits Settlements Code reads as follows: —

"No person shall appear on behalf of the Public Prosecutor in any criminal appeal.... other than the Public Prosecutor or the Solicitor-General or by a deputy appointed under sub-section (3) or by an advocate authorised under sub-section (4)."

In view of the fact that it is only the Public Prosecutor who could have appealed in this case I am of the view that the present appeal by the Commissioner of the Municipality of the Town & Fort of Malacca is incompetent and it is consequently dismissed.

Appeal dismissed.

Solicitors: *Koh Kim Leng & Co.; P. G. Lim & Co.*

LEE SOO CHUAN v. LAI AH YAN & ANOR.

[O.C.J. (Abdul Hamid J.) October 11, 1971]

[Kuala Lumpur — Originating Motion No. 28 of 1971]

Practice and Procedure — Appeal from court of senior inspector of mines — Whether a court within the meaning of "subordinate court" — Mode of appeal — Courts of Judicature Act, 1964, s. 3 — R.S.C., 1957, O. 59, rr. 1 & 2.

This was an application for an order that the originating motion dated July, 9, 1971, and all subsequent proceedings be set aside. The applicants, respondents in that originating motion, were seeking an order that the decision of the senior inspector of mines given in a civil suit in the senior inspector of mines' court, Kuala Lumpur, be set aside.

Counsel for the applicants submitted that the senior inspector of mines, in exercising the power under section 97(ii) of the Mining Enactment, sat as a court within the meaning of the definition of "subordinate court", as defined under the Courts of Judicature Act, 1964. He further submitted that O. 39 r. 2 of the Subordinate Courts Rules should apply in an appeal from any order or decision of a mining court, and that such appeal should not be by way of originating motion.

On the other hand, respondents' counsel submitted that a mining court was not a subordinate court for purposes of the Subordinate Courts Rules, and that an appeal from the senior inspector of mines' court was not an appeal from a subordinate court but rather an appeal from a person, and therefore O. 59 r. 13 of the R.S.C. 1957, should have applied.

Held, allowing the application: (1) the senior inspector of mines not only possesses the powers of a first class magistrate for the purpose of compelling the attendance of witnesses, maintaining order in his court, but also for carrying into effect the provisions of the Mining Enactment. In dealing with the cases that the Enactment requires him to hear and decide, the senior inspector of mines follows the procedure prescribed for an inferior court. Therefore, the court of the senior inspector of mines comes within the meaning of "subordinate court" as defined under section 3 of the Courts of Judicature Act, 1964. Thus, if a mining court is an inferior court, then rules 1 and 2 of Order 59, R.S.C., 1957, would apply, dealing with the procedure governing appeals from both subordinate courts and statutory bodies;

(2) the proceedings by way of originating motion was not the proper procedure to adopt on an appeal from the decision of the senior inspector of mines.

Cases referred to:-

(1) *Sundram* v. *Chew Choo Khoon* [1968] 2 M.L.J. 40.

(2) *Leong Quake Hin* v. *Lee Kor Fan* [1967] 1 M.L.J. 80.

(3) *In re application of* (1) *Chong Fye Lee* and (2) *Toong Hing Loong Tin Mining Co. Ltd.* [1965] 1 M.L.J. 29.

MOTION.

T. K. Tang for the appellant.

V. P. Nathan for the respondents.

Cur. Adv. Vult.

Abdul Hamid J.: This is an application asking for an order that the originating motion dated the 9th day of July, 1971 and all subsequent proceedings be set aside. The applicants, the respondents in that originating motion, are seeking for an order that the decision of the senior inspector of mines, Selangor given on 17th June 1971 in civil suit (Selangor) No. 3 of 1970 in the Senior Inspector of Mines' Court, Kuala Lumpur whereby the said senior inspector of mines ordered that the sublease over mining certificate No. 1517 be cancelled, be set aside.

Mr. T. K. Tang, counsel for the applicants submitted that the senior inspector of mines, in exercising the power under section 97(ii) of the Mining Enactment, sits as a court within the meaning of the definition of "subordinate court" as defined under the Courts of Judicature Act, 1964. He submitted that O. 39 r. 2 of the Subordinate Courts Rules should apply in an appeal from any order or decision of a mining court. Such appeal should not be by way of originating motion.

Mr. V. P. Nathan, counsel for the respondents (applicants in the originating motion) submitted that a mining court is not a subordinate court for purposes of the Subordinate Courts Rules and an appeal from the senior inspector of mines is not an appeal from a subordinate court but an appeal from a person and O. 59 r. 13 of the Rules of the Supreme Court 1957 should apply. In support of his contention, Mr. Nathan cited the case of *Sundram* v. *Chew Choo Khoon.*[1] In that case, Chang Min Tat J. dealt with an appeal against the decision of the Collector of Land Revenue who disallowed the application of the chargor for the adjournment or foreclosure action instituted by the chargee. The learned judge held that —

"The procedure for an appeal from a statutory body to the High Court is laid down in O. 59 r. 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in rule 13 (1), such an appeal must be lodged by the originating motion for the following reasons:

(i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of section 3 of the Courts Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process:

(ii) the deliberate use of 'motion' in O. 59 r. 13 (1) in contradistinction to 'notice of motion' in the corresponding English rule — O. 59 r. 38 established that under O. 59 r. 13 (1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion;"

Mr. Nathan also drew my attention to those cases which were cited in *Sundram's* case, *supra.* Referring to *Leong Quake Hin* v. *Lee Kor Fan,*[2] Mr. Nathan submitted that the procedure adopted in that case was wrong. This was an appeal from the decision of the senior inspector of mines rejecting the appellant's claim for cancellation of a mining lease brought by way of a civil appeal from a subordinate court.

As regards *Sundram's* case, *supra,* I see no reason to disagree with the decision of the learned judge.

However, there is only one observation which I should like to make. I am unable to say whether the learned judge in that case considered the definition of subordinate court" under section 3 of the Courts of Judicature Act, 1964. In any event, the problem does not seem to arise here in view of the reasons given by the learned judge for his decision. It is clear from his decision that the Collector of Land Revenue — a statutory body — though vested with judicial powers, is not a subordinate court within the meaning of section 3 of the Courts Ordinance, 1948. The relevant part of section 3 reads —

"In addition to the Supreme Court there shall be established the following courts for the administration of civil and criminal law in the Federation:

(a) Sessions Courts;

(b) Magistrates' Courts;

(c) Penghulus' Courts."

In the light of the definition of the word "court" under section 2 of the 1948 Ordinance, it seems to me that section 3 of the Courts Ordinance, 1948 could only be construed to refer to courts established by Part IX of the Constitution or by that Ordinance.

In my view, the reasoning advanced in *Sundram's* case, *supra*, cannot apply to the instant case. The nature of the judicial powers, the circumstances under which and the manner in which these powers are required to be exercised, must be carefully considered before deciding whether an appeal from the decision of a senior inspector of mines is an appeal against the decision of a statutory person or body or against that of an inferior court. I propose to examine some of these provisions.

In view of the constant reference that is made to the Senior Inspector of Mines' Court as a "mining court", it would seem to me the object of the Enactment is to establish under the Enactment, an inferior court equivalent to that of the court of a first class magistrate except that it has powers to deal with only specific matters connected with mining operations and land leased for mining. Section 97(ii) of the Enactment vests the senior inspector of mines with discretionary power to cancel a sublease. Before making a decision, he is required to hold an enquiry in the manner provided by the Enactment. A complaint when filed must be in writing. The senior inspector of mines shall then issue summons, stating the nature of the complaint and the place of the enquiry.

He may summon persons whose interests may be affected and is vested with the powers of a first class magistrate for the purpose of compelling the attendance of witnesses, maintaining order in his court and for otherwise carrying into effect the provisions of the Enactment. At the hearing of the complaint, the parties will state their case and adduce evidence. At the conclusion of the enquiry, the senior inspector of mines shall give his decision. The Enactment also vests the senior inspector of mines with the power, at any time before he delivers judgment, to order any case pending in his court to be transferred to the High Court (section 101). The High Court may on the other hand, transfer a case from the senior inspector of mines' court to its court (section 102). The Enactment also enables a civil court to transfer its case to the senior inspector of mines' court (section 103). Apart from these provisions, the Enactment also requires a senior inspector of mines to keep record and notes of evidence and confers on persons interested in any disputed decision or order of the senior inspector of mines, the right to obtain a copy of such record and notes upon payment of a prescribed fee (section 105). Amongst the other provisions, section 106 of the Enactment provides for the enforcement of the senior inspector of mines' decree by a civil court (section 106) and section 107 provides that an appeal shall lie to the High Court from the decision of the senior inspector of mines.

The object of the Enactment is to establish an inferior court comparable to that of the court of a first class magistrate is further illustrated by section 136 of the Enactment which confers jurisdiction on the senior inspector of mines to try certain offences and impose certain punishments. An appeal against the decision of the senior inspector of mines shall lie to the High Court from any judgment or sentence of a senior inspector of mines and such appeal shall be proceeded with in the manner provided by Chapter XXX of the Criminal Procedure Code, *i.e.* the procedure governing the appeal from the decision of a magistrate or a president of a sessions court to a High Court.

In the light of the various provisions which I have referred to above, I am of the view that the senior inspector of mines not only possesses the power of a first class magistrate for the purpose of compelling the attendance of witnesses, maintaining order in his court but also for otherwise carrying into effect the provisions of the Enactment. In dealing with the cases that the Enactment requires him to hear and decide, the senior inspector of mines follows the procedure which is normally prescribed for an inferior court.

Mr. Tang referred to me the case of *In re Applications of (1) Chong Fye Lee and (2) Toong Hing Loong Tin Mining Co. Ltd.*[3] where Azmi J. (as he then was) held that —

"A warden of mines holding inquiries under the Mining Enactment (Mining Enactment No. 69 Johore) is an inferior court within the meaning of the words given in the definition of 'Subordinate Court' in section 3 of the Courts of Judicature Act, 1964."

"Subordinate court" is defined under section 3 of the Courts of Judicature Act, 1964 to mean —

"any inferior court from the decisions of which by reason of any written law there is a right of appeal to any High Court and means in relation to any High Court any such court as by any written law has jurisdiction within the local jurisdiction of such High Court."

In the present case, I think the court of the senior inspector of mines comes within the definition. If a mining court is an inferior court within the meaning of the words "subordinate court" as defined under the Courts of Judicature Act, 1964, then rules 1 and 2 of O. 59 of the Rules of the Supreme Court would apply. O. 59 deals with the procedure that governs appeals from both subordinate courts and statutory bodies and rules 1 and 2 read —

"1. *Entry of Appeal.* On receiving an appeal record under Order XXXIX of the Subordinate Courts Rules, 1950, the Assistant Registrar shall enter the appeal in a list of appeals from Subordinate Courts.

2. *Memorandum of Appeal.* (1) The appellant shall, within fourteen days from the date of service on him of the notice referred to in Order XXXIX, rule 3 sub-rule (2) of the Subordinate Courts Rules, 1950, or within such extended time as the High Court may allow, file in the High Court in duplicate a memorandum of appeal in Form 23 in the First Schedule hereto.

(2) The appellant shall within the like period serve each respondent with a copy of such memorandum and a copy of the appeal record."

For these reasons I would hold that the proceedings by way of originating motion is not the proper procedure to adopt on an appeal from the decision of the senior inspector of mines. Accordingly I allow this application and set aside the originating motion commencing this action and all subsequent proceedings therein with costs.

Application allowed.

Solicitors: *Cumarasami, Tang & Co.; Richard Talalla & Co.*

RE DEREK SELBY DECD.

[R. Cr. J. (Sharma J.) October 14, 1971]

[Malacca — Criminal Revision No. 6 of 1971]

Criminal Law and Procedure — Revision — Decision of magistrate holding a coroner's inquiry — Whether an inferior court — Criminal Procedure Code (S.S. Cap. 21), ss. 320, 330(2), 332(1), 335(1).

Criminal Law and Procedure — Magistrate holding inquiry into cause of death — Verdict suicide — Whether suicide can be presumed.

An inquiry was held by a magistrate, under section 330(2) of the Straits Settlements Criminal Procedure Code, into the cause of death of one Derek Selby. The learned magistrate recorded a finding that the deceased came to his death by an act of suicide and gave his verdict accordingly. The deceased's wife filed a revision petition in the High Court for the purpose of deciding the correctness, legality or propriety of that finding.

The issue for determination was whether a revision did lie against the finding of a magistrate in a coroner's inquest, under section 335(1) of the Straits Settlements Criminal Procedure Code.

Held, allowing the petition: (1) section 332(1) of the Settlements Code confers all the powers of a court on the magistrate who holds a coroner's inquiry. Thus, a coroner's court is an inferior court of record by virtue of section 320 of the Straits Settlements Criminal Procedure Code. Therefore, in this case the High Court had jurisdiction to entertain the petition for revision;

(2) the learned magistrate had gone wrong in his finding and in his verdict of "suicide". There was no sufficient evidence on record to warrant that finding to the exclusion of any other reasonable hypothesis.

Cases referred to:-

(1) *Queen Empress* v. *Tulja* I.L.R. 12 Bom. 36.

(2) *Emperor* v. *Bhagwandas* A.I.R. 1946 Bom. 184.

(3) *Mahabir Singh* v. *Emperor* A.I.R. 1944 Cal. 17.

(4) *R.* v. *Huntbash, ex parte Lockley* [1944] K.B. 606 at p. 608.

REVISION.

M. Shanker for the petitioner.

Ahmad bin Haji Abdul (Deputy Public Prosecutor) for the Public Prosecutor.

Sharma J.: An inquiry was held by the magistrate, Jasin under section 330(2) of the Straits Settlements Criminal Procedure Code (= section 333(ii) of the F.M.S. Criminal Procedure Code) into the cause of death of one Derek Selby. At the end of the said Inquiry the learned magistrate recorded a finding that the deceased came to his death by an act of suicide and gave his verdict accordingly.

Mrs. Derek Selby being not satisfied with the finding and the verdict of the magistrate filed a revision petition in the High Court with a view that I should call for the record and satisfy myself as to the correctness, legality or propriety of that finding. The revision finally came up for hearing before me on the 28th August 1971 when I set aside the finding of the magistrate and quashed the verdict he had given. I had some doubts in the beginning whether a revision by Mrs. Selby was at all competent when the magistrate had held an Inquiry under Chapter XXX of the Straits Settlements Criminal Procedure Code (Chapter XXXII of the F.M.S. Criminal Procedure Code). The matter was fully and very ably argued by learned counsel for the petitioner. I was also advised that there was no reported case of our courts dealing with the question of the maintainability of a revision in such an instance and that I should, if possible, write down the reasons why I had ultimately decided that a revision did lie against the finding of a magistrate under section 335(i) of the Straits Settlements Criminal procedure Code. I will now proceed to deal briefly with my initial doubts and why I finally allowed the revision petition.

Section 320 of the Straits Settlements Criminal Procedure Code (= section 323 of the F.M.S. Criminal Procedure Code) reads as follows: —

"(1) The High Court may call for and examine the record of any proceeding before any inferior *Criminal Court* for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court.

(2) Orders made under sections 107 and 108 are not proceedings within the meaning of this section."

The Criminal Procedure Code was amended by Act 25 of 1967. Sub-section (2) of section 320 of the Straits Settlements Criminal Procedure Code prior to this amendment read as follows: —

"(2) Orders made under sections 107 & 108 and *proceedings under Chapter XXX* are not proceedings within the meaning of this section."

The words "and proceedings under Chapter XXX" were deleted from section 320(2) as a result of the amendment made in 1967.

It is only the records of proceedings "before an inferior criminal court" that can be called and examined by a judge of the High Court under section 320(1) of the Settlements Code. The question was whether a magistrate holding an inquiry under Chapter XXX